ordered to be erased from the medical register. On appeal to the Privy Council it was contended that the Disciplinary Committee was wrong to erase his name from the register. Lord Upjohn in delivering the judgment of the Board said (at page 1112):

"It is equally clear that where the committee exercises its power to erase, a right of appeal to their Lordships' Board is given by section 36(3) both against the findings of infamous conduct and the decision to erase. The powers of the Board to correct the determination of the committee on the hearing of such an appeal are in terms unlimited, but in principle, where a professional body is entrusted with a discretion as to the imposition of the sentence of erasure their Lordship should be very slow to interfere with the exercise of that discretion. There appears to be no authority directly in point under the Medical Acts but their Lordships have been referred to some analogous authorities in the cases of professional misconduct of solicitors.

Their Lordships are of the opinion that Lord Parker C.J. may have gone too far *In re a Solicitor* ((1960) 2 Q.B. 212) when he said that the appellate court would never differ from sentence in cases of professional misconduct, but their Lordships agree with Lord Goddard C.J. in *In re a Solicitor* ((1956) 1 W.L.R. 1312) when he said that it would require a very strong case to interfere with sentence in such a case, because the Disciplinary Committee are the best possible people for weighing the seriousness of the professional misconduct.

No general test can be laid down, for each case must depend entirely on its own particular circumstances. All that can be said is that if it is to be set aside the sentence of erasure must appear to their Lordships to be wrong and unjustified."

The penalty imposed in this case does not appear to me to be wrong and unjustified.

The appeal is dismissed and the appellant must pay the costs of this appeal.

Appeal dismissed.

Solicitors: *Donaldson & Burkinshaw; Drew & Napier.*

COLLIN DEVELOPMENT (PTE) LTD. v. HONG LEONG HOLDINGS LTD.

[O.C.J. (Chua J.) February 27, 1976]
[Singapore — Suit No. 3667 of 1974]

Easement — Right of way — Co-owners — Dominant tenement — Absence of owner of servient tenement — Cause of action of one co-owner against the other — Parties — Extinguishment and abandonment of easement.

The servient tenement was owned by a company which was defunct and was not a party in the action. The plaintiffs and the defendants have identical right of way over the occupation right on the servient tenement. Recently, the defendants commenced construction works of a building project situated partially on an adjoining property also owned by them and their dominant tenement. Their contractors began to use the right of way for access into and egress from the building site. The plaintiffs complained against the defendants for substantially interfering with their enjoyment of right of way. They sued for injunction restraining the defendant from using the right of way as aforesaid or for other purposes. The defendants counter-claimed for certain declarations.

Held: (1) the plaintiffs have no cause of action unless the plaintiffs proved that the defendants' action caused substantial interference with their enjoyment of the right of way;

(2) there was no evidence that the plaintiffs have been substantially obstructed by the defendants' building activities and operations;

(3) the plaintiffs have no cause of action as there was no substantial interference of the plaintiff's enjoyment of their right of way;

(4) the defendants were not entitled to the declarations as the servient owner was not a party of the proceedings.

Cases referred to:-

(1) *Hutton v. Hambro* 175 E.R. 1031.

(2) *Pettey v. Parsons* [1914] 2 Ch. 653.

CIVIL SUIT.

Lee Bon Leong for the plaintiffs.

Cheng Tim Pin for the defendants.

Chua J.: The plaintiff is the owner of two pieces of land known as Lot 111[32] and Lot 111[33] both of T.S. XXI in the District of Claymore, Singapore. The defendant is the owner of Lot 111[34] and adjoining Lot 561 (formerly known as Lot 122) of the same Town subdivision and District.

Adjoining Lots 111[32], 111[33] and 111[34] is Lot 111[31].

It is not in dispute that the owners of Lots 111[32], 111[33] and 111[34] have vested in them a right of way over Lot 111[31], which contains an area of 9,276 square feet (hereinafter referred to as "the right of way"). Lots 111[31], 111[32], 111[33], 111[34] were formerly one lot owned by Mutual Trading Ltd. Lot 111[31] is still owned by Mutual Trading Ltd.

The right of way was granted by Mutual Trading Ltd. (then in liquidation) in 1919 and the terms of the grant is in the following terms:

"And Together with full and free right and liberty for the purchaser his executors administrators and assigns being the owner or owners for the time being of the land hereby conveyed or any part thereof and their tenants and servants and all other persons authorised by him or them in common with others having a similar right from time to time and at all times hereafter at his and their will and pleasure to pass and repass with or without animals and vehicles, in along and over the reserve for road coloured yellow in the said plan."

The defendant is a firm of land developers and it was at the time of the filing of the writ in December, 1974, in the course of building 3 blocks of high rise flats and garden on its properties Lot 561 and Lot 111[34], known as "Grange Heights." The blocks of flats are built on Lot 561 and the garden, with tennis courts, is on Lot 111[34].

The plaintiff complained that (1) the defendant had permitted its contractors employed for the construction of Grange Heights to use the right of way for access into and egress from Lot 561; (2) the defendant's contractors had excavated the side table of the metal road on the right of way and the earth excavated was removed to the Grange Heights site for filling purposes; (3) the defendant was in the course of making up a metal road which led from Grange Heights in the direction of the right of way and the defendant intended to link up the road with Grange Road through the right of way; (4) the defendant was in the course of selling the apartments in Grange Heights, and in its brochure regarding Grange Heights the defendant represented that it intended to give the purchasers access to Grange Heights at three points, one of them from Grange Road through the right of way.

The plaintiff now claims against the defendant for:—

"(1). A declaration that the defendants Hong Leong Holdings Limited as the owners of Lot 561 of T.S. XXI by their directors, officers, servants, workmen or agents or any of them or otherwise howsoever are not entitled to use, nor as such owners to permit or invite any persons or purchasers of apartments in the Grange Heights to use Lot 111[31] of T.S. XXI, District of Claymore, Singapore or any part thereof for the purpose of passing either to or from Grange Road, Singapore aforesaid.

(2). An injunction to give effect to the said declaration restraining the defendants as the owners of Lot 561 of T.S. XXI by their directors, officers, servants, workmen or agents or any of them or otherwise howsoever from so using and inviting their purchasers and other persons so to use the said passage.

(3). Damages."

In its defence the defendant denied that it had "substantially interfered with the plaintiffs' enjoyment of the right of way . . . as alleged or at all, or that the plaintiffs' enjoyment of the right of way was adversely affected, or that the defendants evinced any clear intention to continue any interference or disturbance as alleged or at all." The defendant contended that it was entitled to an identical or similar right of way over Lot 111[31] and it was entitled to pass or re-pass over the rights of way and was entitled to authorise other persons to pass and re-pass over the right of way and counterclaimed —

"1. For a declaration that the defendants are entitled to pass and re-pass Lot 111[31] T.S. XXI, Singapore as a right of way of access to their property Lot 111[34] T.S. XXI, Singapore.

2. For a declaration that the defendants are entitled to authorise other persons to pass and re-pass the said right of way for access to Lot 111[34] or elsewhere.

3. For a declaration that the defendants are entitled to carry out improvement of the said right of way over Lot 111[31], T.S. XXI, Singapore.

4. For a declaration that the defendants are entitled to authorise other persons to pass and re-pass Lot 111[31], T.S. XXI, Singapore for access to Lot 561 so long as such user does not substantially affect the plaintiffs' enjoyment of the right of way."

On December 12, 1974, the plaintiff obtained an interim injunction restraining the defendant, as owners of Lot 561, its directors, officers, servants, workmen or any of them from using or permitting or inviting any persons or purchasers of the apartments in the Grange Heights to use the right of way for the purpose of passing either to or from Grange Road to Grange Heights. In February, 1975, the plaintiff obtained an order extending the interim injunction until after the trial of this action.

The defendant submits that the plaintiff has no cause of action unless the plaintiff proves that the defendant's action caused substantial interference with its enjoyment of the right of way. In my view this submission is correct.

In *Hutton* v. *Hamboro*,[1] where the obstruction of a private right of way was alleged, Cockburn C.J. laid down that the question was whether practically and substantially the right of way could be exercised as conveniently as before.

In *Pettey* v. *Parsons*,[2] where a right of way over land laid out as a roadway was granted to the owner of an adjoining land, Lord Cozens-Hardy M.R. said (at page 662):

"It must not be forgotten that this is not a highway; it is a private road. It must not be forgotten that the rights of interference with a right of way are by no means the same in the case of a public highway as in the case of a private road. In a public highway any obstruction is a wrong if it is appreciable. That I think is the recognised distinction. Any appreciable obstruction in a highway can be prevented by indictment or otherwise, but in the case of a private right of way the obstruction is not actionable unless it is substantial. There must be a substantial interference with the enjoyment of the right of way."

The learned editors of *Halsbury's* Laws of England, 3rd Ed. have this to say on the matter (Vol. 12, page 580):

"1258. What amounts to disturbance. Any wrongful interference with a right of way constitutes a nuisance. As, however, a right of way never entitles the grantee, or those lawfully using the way under the grant, to the exclusive use of the land over which the way exists, it is not every obstruction of the way which amounts to an unlawful interference. No action will lie unless there is a substantial interference with the easement granted. The effect of a grant of a right of way differs in this respect from a grant of the soil of the way; for in the latter case the slightest interference is a trespass.

The question whether any particular interruption amounts to an unlawful interference depends upon the nature of the right of way and of the locus in quo, and upon the general circumstances of the case. Any disturbance of a way is unlawful which renders the way unfit for the purposes for which it was granted, to the injury of the person entitled to the way. Thus, there would be an unlawful interference if the way is so damaged by vehicular or other traffic that the grantee is unable to use it; or if the way is either wholly or partially obstructed by being built upon; or if the servient tenement is ploughed up so that the way cannot be used.

The nature of the remedy is the same whether the way was created by express grant or by way of reservation, or is claimed under the doctrine of prescription."

The question I have to consider is whether the action of the defendant has substantially interfered with the plaintiff's enjoyment of the right of way.

At the date of the trial of this action the defendant's development is almost completed and since the interim injunction was granted the defendant's contractors' lorries have ceased to make use of the right of way to get to Lot 561. The plaintiff, however, adduced evidence that there were a number of activities carried on by the defendant on Lot 111[31] in January, July, August, 1975, thereby causing obstruction on the right of way and that people were making use of the right of way to go to Grange Heights from Grange Road and from Grange Heights to get to Grange Road.

The plaintiff says that Grange Heights consists of 120 units of luxury apartments; that there would be a car park for 188 cars; that if the defendant permits the residents of Grange Heights to use the right of way as a link road to Grange Road the vehicular traffic on the right of way would be substantially increased and would thereby seriously and adversely affect the plaintiff's enjoyment of the right of way.

The evidence adduced by the plaintiff only shows that there were activities carried on on lot 111[31] in 1975 and that persons were walking along the right of way from Grange Road to Grange Heights and from Grange Heights to Grange Road. The digging of the trench along the right of way was not carried out by the defendant but by the Public Utilities Board.

There is no evidence that the plaintiff has been substantially obstructed by these activities.

The plaintiff purchased Lots 111[32] and 111[33] in March, 1973, for development. There is a dwelling house on Lot 111[32] and a dwelling house on Lot 111[33]. These two houses are unoccupied. According to the plaintiff a gardener cum watchman lives in one of these houses and sometimes the plaintiff's guests stay in that house and the director's family made use of one of the houses at weekends. I do not accept Tan Eng Khuay's evidence that the plaintiff inspected the houses daily and made use of the right of way almost daily.

Ching Mun Fong, a director of the plaintiff Co. said in evidence that the activities carried out by the defendant on the right of way had blocked her path and she could not get to the plaintiff's house and that that happened in June, July, August, September, October and December, 1974. She agreed that that was when the Public Works Department were digging the trenches. I do not accept her evidence that she could not get to the plaintiff's house.

I inspected the right of way on the October 21, 1975, during the course of the hearing and I found that the road on Lot 111[31] was in fairly good condition and there was no difficulty for the plaintiff to get to the houses on Lots 111[32] and 111[33].

Access to Grange Heights is now at two points — River Valley Road and St. Thomas Walk. As from March, 1975, Lot 111[31] as an access road is excluded from the defendant's development. Even if Lot 111[31] is used as an access road it is highly improbable that vehicular traffic from Grange Heights along the right of way would be so heavy as to substantially interfere with the plaintiff's enjoyment of the right of way.

I find that there has been no substantial interference of the plaintiff's enjoyment of the right of way and consequently the plaintiff has no cause of action against the defendant.

In the result the plaintiff's claim is dismissed with costs.

I now come to deal with the counterclaim of the defendant. The short answer to the counterclaim is that this is a counterclaim against the plaintiff, who is not the owner of Lot 111[31], the servient tenement, and in my view the defendant cannot get the declarations that it is seeking against the plaintiff.

The counterclaim of the defendant is dismissed with costs.

Order accordingly.

Solicitors: *Lee & Co.; Yap & Yap.*

MALAYSIAN REPORTS

EASTERN MINING & METALS CO. SDN. BHD. v. M.M. ISMAIL & ORS.

[F.C. (Suffian L.P., Raja Azlan Shah and Wan Suleiman F.JJ.) November 21, 1975]

[Kota Bharu — Federal Court Civil Appeal No. 86 of 1974]

Industrial Law — Termination of service by giving four days' notice — Employee entitled to two months' notice or two months' salary in lieu — Collective agreement giving retrenchment benefits — Employee not a member of trade union — Employee given and accepting benefits under collective agreement — Whether entitled to claim two months' salary under service agreement.

The respondent had his services terminated by the appellant, who gave only four days' notice. Under the terms of his employment he was entitled to two months' notice or two months' salary in lieu. The respondent was in fact given retrenchment benefits under the terms of a collective agreement between the appellants and the trade union. The respondent was not a member of the trade union but he accepted the retrenchment benefits which were more than two months' salary. Subsequently he sued for payment of the two months' salary in lieu of notice. Judgment was given for him in the Magistrate's Court and on appeal this was affirmed by the High Court. The appellant appealed to the Federal Court.

Held, allowing the appeal: as the respondent had accepted the greater benefits under the collective agreement he could not at the same time claim the lesser benefits under his individual term of employment.

Case referred to:-

(1) *Lissenden* v. *C.A.V. Bosch Ltd.* [1940] A.C. 412.

FEDERAL COURT.

D. Puthucheary for the appellant.

A. Gomez for the respondent.

Suffian L.P. (read by **Wan Suleiman F.J.**): M.M. Ismail the plaintiff was employed by EMMCO the defendant as a Railway Inspector. The plaintiff did not belong to a union. His salary and conditions of service were contained in a letter of appointment dated February 26, 1968, Exhibit P1 at page 41 of the appeal record.

Clause 10 of the letter of appointment headed "Termination" reads as follows: —

"10. Either party may terminate the appointment at any time by giving two months' notice in writing. Alternatively, the company may terminate the appointment at any time on giving two months' pay in lieu of notice."

Then there is clause 7 headed "Medical Benefits". It reads as follows: —

"7. You will be entitled to medical benefits in accordance with Part III of the terms and conditions of employment for monthly-paid staff."

The terms and conditions of employment referred to in clause 7 were embodied in a collective agreement (Exhibit D10 at page 54) between the defendant company and a union of some of its employees, of which union the plaintiff is not a member.

Part III of that agreement is headed "Medical Benefits."

Section 1(g)(i) of that part reads: —

"(g) (i) Any employee who, after a minimum of five years continuous and good service is retired or retrenched by the company shall be entitled to the same benefits as laid down in paragraph (f) above."